



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue  
Seattle, WA 98101

November 4, 1999

Reply To  
Attn Of: WCM-126

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Mr. John P. Donahue, Senior Vice President,  
General Counsel & Secretary  
Rhodia Inc.  
CN 7500  
Cranbury, NJ 08512-7500

Mr. John M. Iatesta, Assistant Secretary  
Rhone Poulenc Ag Company Inc.  
(Formerly Rhone-Poulenc, Inc.)  
CN 7500  
Cranbury, NJ 08512-7500

Mr. Richard Padden, Member  
Container Properties, L.L.C.  
1216 14<sup>th</sup> Court East  
Sumner, WA 98390

Re: **Demand for Stipulated Penalties**  
**Administrative Order on Consent for Corrective Action ("Order")**  
**Docket No. 1091-11-20-3008(h)**  
**Rhone-Poulenc Inc. Marginal Way Facility**  
**WAD 00928 2302**

Dear Sirs:

In accordance with Section 15 of the above-referenced Order, the United States Environmental Protection Agency (EPA) is demanding stipulated penalties for the failure of Respondents to submit documents of acceptable quality in response to EPA's January 13, 1999, request for additional work. This demand for stipulated penalties is limited to documents submitted by the Respondents from June 16, 1999, to September 29, 1999, in response to EPA's letter dated January 13, 1999, pertaining to groundwater sampling and analysis at the Marginal Way Facility.

Background:

In a letter dated January 13, 1999, EPA issued a "determination of need for additional work" pursuant to Paragraph 7.11 of the Order. This determination required two tasks: 1) the submittal of a tidal study workplan and 2) the submittal of a groundwater sampling and analysis plan. The determination detailed the requirements which were to be included in the workplans. The workplans were due to EPA by March 22, 1999. This demand for stipulated penalties is specific to the second task, the groundwater sampling and analysis plan.

On March 22, 1999, Respondents submitted a document entitled, "Draft Groundwater Monitoring Plan".

On June 16, 1999, EPA disapproved the March 22, 1999 submittal. EPA's disapproval letter included five pages of comments describing the deficiencies, and required the Respondents to submit a revised Groundwater Monitoring Plan within thirty days. The March 22, 1999 letter also stated that, "[I]f the Respondents continue to submit documents that fail to address *all* of EPA's comments, EPA will calculate stipulated penalties pursuant to Section 15 of the Order. Per Paragraph 15.2 of the Order, if penalties are demanded by EPA for submission of documents of unacceptable quality, the first date of non compliance will be the date of this letter." (i.e., June 16, 1999).

On July 19, 1999, Respondent submitted a Revised Draft Groundwater Monitoring Plan.

On August 11, 1999, Christy Brown (EPA) had separate discussions with Alan Carey (AGI) and Pete Wold (RCI) regarding how the July 19, 1999 submittal had not met all of the requirements of the original January 13, 1999 determination letter.

On August 20, 1999, Respondent submitted a revised plan. This revision still failed to meet all of the requirements of the January 13, 1999 determination letter.

On September 1, 1999, Rich Padden (Container Properties LLC.), Don Verfurth (Carney, Badley, Smith & Spellman), Christy Brown (EPA), Kim Ogle (EPA), Jamie Sikorski (EPA), Rene Fuentes (EPA), Jennifer MacDonald (EPA) met to discuss continuing problems with the Groundwater Monitoring Plan.

On September 29, 1999, EPA approved the Groundwater Monitoring Plan submitted on August 20, 1999, with modifications because the August 20, 1999 submittal still failed to meet all of the items that were required.

As the above recounting of events shows, after repeated communication by EPA to Respondents, the Respondents failed to submit documents of acceptable quality to EPA, omitting

straightforward requirements clearly specified in writing. Even the final August 1999 submittal required modification by EPA at the time of its approval. As you are aware, both EPA Headquarters and Region 10 consider corrective action at the former Rhone-Poulenc facility a high priority and are obligated to monitor such facilities for corrective action progress. It is a source of considerable frustration to Region 10 that no progress has been made with respect to groundwater characterization at this facility from August 1997, the date of EPA's initial request that this work be performed, until now.

Stipulated penalties are demanded pursuant to Paragraph 15.1(B) of the Order. The Region has determined that stipulated penalties could be calculated from June 16, 1999, to September 29, 1999, for a total of \$279,500.00. However, based upon the discussion that took place during the September 1, 1999 meeting, pursuant to Paragraph 15, the Region is calculating stipulated penalties from June 16, 1999, to August 20, 1999, for a total demand of \$159,500.00.

Pursuant to Paragraph 15.3, all penalties shall be due and payable within thirty (30) calendar days of receipt of this letter. As specified in Paragraph 15.5, penalties shall be made payable by certified or cashier's check to the Treasurer of the United States of America and shall be remitted to:

U.S. Environmental Protection Agency  
(Region 10 Hearing Clerk)  
P.O. Box 360903M  
Pittsburgh, Pennsylvania, 15251

Copies of the check and letter transmitting the check shall be sent simultaneously to the U.S. EPA Project Coordinators at:

U.S. Environmental Protection Agency  
Region 10 (WCM-121)  
Office of Waste and Chemicals Management  
1200 Sixth Avenue  
Seattle, Washington 98101

and to the Regional Hearing Clerk at:

U.S. Environmental Protection Agency  
Region 10 (ORC- 158)  
Office of Regional Counsel  
1200 Sixth Avenue  
Seattle, Washington 98101

If you have any questions regarding this matter, please call Kim Ogle at (206)553-0955, or have your attorney call Jennifer MacDonald at (206) 553-8311.

Sincerely,

A handwritten signature in black ink, appearing to read "David Coston for".

Jamie Sikorski, Manager

RCRA Compliance Unit

Office of Waste & Chemicals Management

cc: B. Maeng, Ecology NWRO  
C. Blumenfeld, Davis Tremaine  
D. Verfurth, Carney Badley, Smith & Spellman  
M. Smith, AGI Technologies  
P. Wold, RCI Environmental

If you have any questions regarding this matter, please call Kim Ogle at (206)553-0955, or have your attorney call Jennifer MacDonald at (206) 553-8311.

Sincerely,

Jamie Sikorski, Manager  
RCRA Compliance Unit  
Waste and Chemicals Management

cc: B. Maeng, Ecology NWRO  
C. Blumenfeld, Davis Tremaine  
D. Verfurth, Carney Badley, Smith & Spellman  
M. Smith, AGI Technologies  
P. Wold, RCI Environmental

bcc: C. Brown  
K. Ogle  
J. MacDonald  
R. Fuentes  
B. Duncan  
J. Alexander  
M. Bussell  
M. Bailey

CONCURRENCES					POLICY FILE	
Initials:	KAO	Kao for	Kao for		Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Name:	Kim Ogle	Christy Brown	Jennifer MacDonald	Jamie Sikorski	If policy file please bcc to RMSPU Manager	
Date:	11/3/99	11/19/99	11/19/99			
RCRIS EVENT		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>			
SNC IDENTIFICATION		Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>			
(Can it be entered in RCRIS?)		Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>			
SBREFA INFO VERIFICATION		Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>			
PEER REVIEW		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	SB, KS, R.H.		
REGION 9 POLICY FILE		Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>			